

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

MONIQUE SMITH,

Petitioner,

v.

**CIVIL ACTION NO.: 3:19-CV-11
(GROH)**

JOE COAKLEY, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

Pending before the Court is the Report and Recommendation (“R&R”) of United States Magistrate Judge Robert W. Trumble. ECF No. 15. Pursuant to this Court’s Local Rules, this action was referred to Magistrate Judge Trumble for submission of a proposed R&R. Magistrate Judge Trumble issued his R&R on March 16, 2020. Therein, Magistrate Judge Trumble recommends that the Petitioner’s § 2241 petition [ECF No. 1] be denied and dismissed without prejudice.

I. BACKGROUND

Upon review of the record, the Court finds that the facts as explained in the R&R accurately and succinctly describe the circumstances underlying the Petitioner’s claims. The Court incorporates those facts herein. However, the Court has briefly outlined the most relevant facts below.

On January 28, 2019, the pro se Petitioner filed a Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. ECF No. 1. Therein, the Petitioner challenges his conviction, arguing he was denied due process of law and he is “actually innocent” of

the criminal offenses. The Petitioner relies on Brady v. Maryland and United States v. Bagley to support his argument, but it is unclear why he believes he was denied due process of law or is actually innocent. The Petitioner requests “the process and judgement [be held] void and [the Court] reverse and remand for further proceedings.” ECF No. 8 at 8.

II. LEGAL STANDARDS

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge’s findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and of a Petitioner’s right to appeal this Court’s Order. 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

Objections to Magistrate Judge Trumble’s R&R were due within fourteen plus three days of the Petitioner being served with a copy of the same. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The R&R was mailed to the Petitioner by certified mail on March 16, 2020. ECF No. 15. The Petitioner accepted service on March 20, 2020. ECF No. 16. Thereafter, the Petitioner filed a motion requesting an extension of time to file objections. ECF No. 17. The Court granted the Petitioner’s motion, extending his deadline to file objections to June 1, 2020. ECF No. 18. On March 31, 2020, the Petitioner filed his objection to Magistrate Judge Trumble’s R&R. ECF No. 19. Having timely filed his

objection, this Court will review the Petitioner's objection to the R&R *de novo*. The Court will review the remainder of the R&R for clear error.

III. DISCUSSION

In his R&R, Magistrate Judge Trumble recommends that the § 2241 petition be denied and dismissed without prejudice because the Court lacks subject matter jurisdiction. Specifically, the Petitioner cannot satisfy the savings clause of § 2255(e) under In re Jones, 226 F.3d 328 (4th Cir. 2000), because the crimes for which the Petitioner was convicted remain criminal offenses.

In the Petitioner's objection, he does not object to Magistrate Judge Trumble's findings. Instead, he requests that if he has filed his petition in the wrong jurisdiction, the Court transfer his petition to the proper jurisdiction. The Court lacks subject matter jurisdiction because the Petitioner's claim may not be considered under § 2241 without satisfying the savings clause of § 2255(e). The Petitioner has failed to do so here. Accordingly, inasmuch as the Petitioner's request is considered an objection, it is without merit and is hereby **OVERRULED**.

IV. CONCLUSION

Accordingly, upon careful review of the R&R and the Petitioner's objection, it is the opinion of this Court that Magistrate Judge Trumble's R&R [ECF No. 15] should be, and is hereby, **ORDERED ADOPTED** for the reasons more fully stated therein. The Petitioner's § 2241 Petition [ECF Nos. 1] is **DENIED** and **DISMISSED WITHOUT PREJUDICE**.

The Clerk is **DIRECTED** to strike this matter from the Court's active docket. The Clerk is further **DIRECTED** to mail a copy of this Order to the pro se Petitioner by certified

mail, return receipt requested, at his last known address as reflected on the docket sheet.

DATED: April 3, 2020

A handwritten signature in blue ink, appearing to read "Gina M. Groh", is written over a horizontal line.

GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE